July 12, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Ells Lass, Inc.

Date of Filing: February 23, 2005

Case No.: TEE-0017

On February 23, 2005, Ells Lass, Inc. (the firm), formerly Ellsworth and Lassow, Inc., filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that the firm's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

to file Form EIA-782B[2] and permits reporting firms to rely on reasonable estimates.[3]

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."[4] Since all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;[5] the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;[6] extreme or unusual circumstances disrupt a firm's activities;[7] a combination of factors render

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[2] Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

[3] Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

[4] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).

[5] *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

[6] *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

[7] *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

the reporting requirement an undue burden.[8]

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.[9] Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.[10]

II. The Application for Exception

The firm, under the name Ellsworth and Lassow, Inc., was designated by EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis. In support of its application for exception relief, the firm provides the following information. A portion of the firm was sold on July 1, 2004. The remaining firm, now named Ells Lass, consists of one gas station. The owner of the firm states that the business is a "true one-man band" and that he is over-extended and working well beyond his physical capabilities. The owner states that he maintains a skeleton crew of part-time workers, but performs most of the day-to-day operations on his own, including staffing the register, cleaning the restrooms and sweeping the driveway. In addition, he states that he carries out all the business operations, which include completing Form EIA-782B. Finally, he states that the firm has continuously filed Form EIA-782B since 1985.

In response to a request from our office, the firm provided the following additional information: (i) it operated one location before and one after the sale, (ii) its sales revenue was roughly cut in half following the sale, (iii) it employed five full-time employees before the sale and two full-time employees after the sale, and (iv) it

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[8] *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).
[9] *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).
[10] *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

employed the same number of part-time employees before and after the sale.[11]

IV. Analysis

As an initial matter, we address the firm's claim that it has continuously filed the form since 1985. EIA informed us that its records show that the firm has been filing the form since 1999. In the absence of evidence from the firm to the contrary, we assume, for the purposes of this Decision and Order, that the reporting requirement began in 1999.

The firm's argument that the nature of the business has changed does not provide a basis for an exception. Although the firm's revenue and number of employees decreased following the sale of its assets, nothing in the record indicates that the firm is financially strained. The firm does not state how long it takes to complete the report and, therefore, we have no basis to conclude that it is excessive.[12] Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.[13] The fact that the owner of the firm is busy and performs manual labor as well as administrative tasks does not demonstrate that the time required to complete the form poses an undue burden. We note that the burden of this requirement on the firm's owner could be lessened by the use of estimates.[14]

Similarly, the firm's argument that it has filed the form EIA-782B in the past does not provide a basis for an exception.[15] As discussed above, in order to obtain accurate information about the supply and demand for

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[11] Response letter, received April 27, 2005.
[12] *See, e.g. Haynes Oil Co.*, 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); *Dell Oil Ltd.*, 13 DOE ¶ 81,009 (1985) (two days).
[13] *See* Section 10 of General Instructions to Form EIA- 782B.
[14] *See* Section 7 of the General Instructions to Form EIA-782B.
[15] *See Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); *see also Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, the fact that the firm filed the form for the past five years does not establish the existence of an inequity or unfair distribution of burdens that could justify relief.

As the foregoing indicates, the firm has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens."[16] Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Application for Exception filed by Ellsworth and Lassow, Inc., Case No. TEE-0017, be, and hereby is denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 12, 2005

[16] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).